IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

C.M.A.Nos.2151 & 2413 of 2022

Thirumeni .. Appellant
(in C.M.A.No.2151 of 2022)

Sasikumar .. Appellant
(in C.M.A.No.2413 of 2022)

Vs.

1.Balakrishnan

2.The Branch Manager,
The New India Assurance Co. Ltd.,
No.99/c-3, 1st Floor,
Opp. New Bus Stand, Perambalur. .. Respondents
(in both cases)

Prayer in C.M.A.No.2151 of 2022: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to allow the CMA and set aside the award passed by the Motor Accidents Claims Tribunal Judge/Principal District Judge, Perambalur, by its decree and Judgment dated 17.02.20222 made in M.C.O.P.No.620 of 2018.

Prayer in C.M.A.No.2413 of 2022: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to allow the

CMA and set aside the award passed by the Motor Accidents Claims Tribunal Judge/Principal District Judge, Perambalur, by its decree and Judgment dated 17.02.20222 made in M.C.O.P.No.621 of 2018.

(In both cases):

For Appellant(s)	:	Ms.Sithi Fathima Samt for Mr.C.Vidhusan
For R2	:	Ms.S.R.Sumathy

COMMON JUDGMENT

These appeals arise out of a common award passed by the Tribunal in M.C.O.P.Nos.620 & 621 of 2018 and hence, this common judgment is passed in these appeals filed by the claimants seeking for enhancement of compensation.

2.The case of the claimants is that they were traveling in a car belonging to the 1st respondent and this car was driven in a rash and negligent manner and as a result, it dashed on the center median of the road and capsized. Consequently, the claimants and other occupants of the car sustained multiple injuries. The claimant in C.M.A.No.2151 of 2022 sustained fissure fracture of right costo chondral junction with adjacent soft tissue haematoma and air pockets and fracture in right side chest ribs and bilateral mild posteior pleural thickening with trace of fluid on right side and swelling and tenderness in both legs and both hands. The claimant in C.M.A.No.2413 of 2022 sustained fractures in the neck & grade II open shaft of left leg femur and displaced fracture in left scapula and fissure fracture of 2nd and 3rd ribs in left chest and scalp injury and severe injury caused in right eye with sub conjunctival HGE, swelling and tenderness in left thigh lacerated wound over left thigh, deep laceration of 20 x 5 x 5 cm over scalp forehead exposing skull, swelling & tenderness in right maxilla, left shoulder and left side chest wall and dislocation of left Sterno clavicular joint. The disability was assessed by the Medical Board for the claimant in C.M.A.No.2413 of 2022 at 55% and disability of the claimant in C.M.A.No.2151 of 2022 was assessed at 10%. It is under these circumstances, the claim petitions came to be filed seeking compensation.

3.The Tribunal on considering the facts and circumstances of the case and on analyzing the oral and documentary evidence, came to a conclusion that the driver of the car belonging to 1st respondent had driven the vehicle in a rash and negligent manner resulting in the accident. After rendering this finding, the Tribunal proceeded further to fix the compensation in these cases. The total compensation was fixed for the claimant in C.M.A.No.2151 of 2022 at Rs.92,056/- in the following manner:

Disability (Rs.3,000 X 10)	Rs.30,000/-
Loss of earning (6,500 X 1)	Rs.6,500/-
Pain and Suffering	Rs.10,000/-
Extra nourishment	Rs.5,000/-
Transportation	Rs.15,000/-
Medical Expenses (Ex.P21 series)	Rs.25,556/-
Total	Rs.92,056/-

4.The total compensation of Rs.4,25,470/- was fixed for the claimant in C.M.A.No.2413 of 2022 in the following manner:

Disability (Rs.3,000 X 10)	Rs.30,000/-
Loss of earning (6,500 X 1)	Rs.6,500/-
Pain and Suffering	Rs.10,000/-
Extra nourishment	Rs.5,000/-
Transportation	Rs.15,000/-
Medical Expenses (Ex.P26 series)	Rs.3,58,970/-
Total	Rs.4,25,470/-

5.The above compensation amounts were directed to be paid with 7.5% interest per annum.

6.The claimants not being satisfied with the quantum of compensation fixed by the Tribunal, have filed the present appeals seeking for enhancement of compensation.

7.Heard the learned counsel for the appellants and the learned counsel for the 2nd respondent – Insurance Company.

8.This Court have carefully considered the submissions made on either side and the materials available on record.

9.This Court has also carefully gone through the award passed by the Tribunal.

10.In so far as the appellant in C.M.A.No.2151 of 2022 it pertains to M.C.O.P.No.620 of 2018 and it was submitted that the Tribunal has fixed a very low notional monthly income of Rs.3,000/- for an accident which took place in the year 2018. It was further contended that while calculating the loss of earning, a very low monthly income was fixed. That apart, no compensation was granted under the head attender charges in this case even though, the claimant took treatment as an inpatient for nearly three days from 26.06.2018 to till 29.06.2018.

11.In the considered view of this Court, since the accident had taken place in the year 2018, the notional monthly income can be fixed at Rs.7,000/- in line with the judgment of the Division Bench of this Court in **C.M.A.No.3334 of 2021** dated **15.06.2022** in the case of **Future General India Insurance Company Limited Vs. Manivannan and others**. Thus, under the disability head, the compensation can be fixed at Rs.70,000/- (Rs.7,000/- X 10%). In so far as the loss of earning, the claimant had stated that he was working as a Teacher. That apart, the accident has also taken place in the year 2018. Hence, considering the cost of living, the loss of earning can be fixed at Rs.15,000/- (Rs.15,000/- X 1 month). That apart, since the claimant was undergoing treatment as an inpatient for three days, the attender charges can also be fixed at Rs.5,000/-. The compensation fixed under other heads looks reasonable and it does not require interference of this Court.

12.In the light of the above discussion, the compensation fixed by the Tribunal in M.C.O.P.No.620 of 2018 which is the subject matter in C.M.A.No.2151 of 2022 is modified as follows:

1.Disability (Rs.7,000 X 10)	-	Rs.70,000/-
2.Loss of earning (15,0000 X 1)	-	Rs.15,000/-
3.Pain and Suffering	-	Rs.10,000/-
4.Extra nourishment	-	Rs.5,000/-
5.Transportation	-	Rs.15,000/-
6.Medical Expenses (Ex.P21 series)	-	Rs.25,556/-
7.Attender charges	-	Rs.5,000/-
Total	-	Rs.1,45,556/-

13.In so far as the appellant in C.M.A.No.2413 of 2022 pertaining to M.C.O.P.No.621 of 2018, it was contended that the Tribunal had fixed the disability percentage at 10% without noting the fact that Ex.X2 which was marked before the Court clearly shows that the disability was fixed by the Medical Board at 55%. The notional monthly income fixed at Rs.3,000/- was also put to question considering the fact that accident had taken place in the year 2018. The learned counsel for the appellant also submitted that the claimant in this case undertook treatment as an inpatient for seven days in two stretches and in spite of the same, no compensation was awarded under the head of attender charges. That apart, the compensation that was fixed under the head of Extra nourishment was also on a lower side. It was further contended that considering the nature of injuries sustained by the claimant and disability that was assessed by the Medical Board, the compensation fixed under the head of pain and suffering also requires enhancement.

14.As rightly pointed out by the learned counsel for the appellant, Ex.X2 pertains to the claimant in M.C.O.P.No.621 of 2018. A copy of the said Exhibit was also placed before this Court. It clearly shows that the Medical Board has assessed 55% permanent disability for the claimant. However, the Tribunal has fixed the disability at 10%, which requires interference. That apart, the notional monthly income has also been fixed at Rs.3,000/- and whereas, it has to be fixed at Rs.7,000/- since the accident took place in the year 2018 in line with the judgment of the Division Bench of this Court in **C.M.A.No.3334 of 2021** dated **15.06.2022** in the case of **Future General India Insurance Company Limited Vs. Manivannan and others**. The claimant had underwent treatment as inpatient for nearly seven days and therefore, the attender charges can be fixed at Rs.10,000/- and the compensation fixed under extra nourishment can be enhanced to Rs.10,000/-. The compensation fixed under the head of pain and suffering can also be enhanced from

Rs.10,000/- to Rs.20,000/- considering the nature of injuries sustained by the claimant.

15.The Tribunal has fixed the loss of earning at Rs.6,500/-. The claimant in this case was the owner of a Medical Shop. To substantiate the same, Ex.P27 was marked. However, there was no proof on the income that was earned by the claimant during the relevant point of time. In any case, the sum of Rs.6,500/- fixed by the Tribunal as the monthly income is on the lower side. The same can be enhanced to Rs.15,000/- per month. Considering the nature of injuries sustained by the claimant, he would have been out of action for atleast three months. Therefore, the compensation under the head of loss of earning can be fixed at Rs.45,000/- (Rs.15,000/- X 3 months).

16.In view of the above, the compensation fixed by the Tribunal is modified as follows:

1.Disability (Rs.7,000 X 55)	-	Rs.3,85,000/-
2.Loss of earning (15,0000 X 3)	-	Rs.45,000/-
3.Pain and Suffering	-	Rs.20,000/-
4.Extra nourishment	-	Rs.10,000/-
5.Transportation	-	Rs.15,000/-

6.Medical Expenses (Ex.P26 series)	-	Rs.3,58,970/-
7.Attender charges	-	Rs.10,000/-
Total	-	Rs.8,43,970/-

17.In the result,

(i)C.M.A.No.2151 of 2022 is allowed in the above terms. The compensation awarded by the Tribunal at Rs.92,056/- is enhanced to Rs.1,45,556/-. The 2nd respondent – Insurance Company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit Court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

(ii)C.M.A.No.2413 of 2022 is allowed in the above terms. The compensation awarded by the Tribunal at Rs.4,25,470/- is enhanced to Rs.8,43,970/-. The 2nd respondent – Insurance Company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% per annum from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation is concerned, the deficit Court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered. No costs.

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To

1.The Principal District Judge,
Motor Accident Claims Tribunal,
Perambalur.

2.The Section Officer,
VR Section,
Madras High Court,
Chennai.

N.ANAND VENKATESH, J.

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C.M.A.Nos.2151 & 2413 of 2022

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